



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**Via Facsimile and First Class Mail**  
(202) 429-3301

**OCT 31 2014**

Scott Thomas, Esq.  
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RE: MUR 6889  
Eric Byer

Dear Mr. Thomas:

On August 21, 2013, the Federal Election Commission ("Commission") notified your client, Eric Byer, of a *sua sponte* submission designated Pre-MUR 563 indicating potential violations of the Federal Election Campaign Act of 1971, as amended. On August 28, 2013, you notified the Commission, in a separate *sua sponte* submission, of the possibility that your client, Eric Byer ("Byer"), may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with activity between December 2001-August 2012.

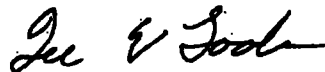
After reviewing the Submissions, the Commission found reason to believe, on October 21, 2014, that Byer violated 52 U.S.C. §§ 30118(a) and 30122 (formerly 2 U.S.C. §§ 441b(a) and 441f) and 11 C.F.R. §§ 110.4(b)(1)(ii) and 114.2(e). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

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In the meantime, this matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) (formerly 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A)) unless you notify the Commission in writing that you wish the matter to be made public. We look forward to your response.

On behalf of the Commission,



Lee E. Goodman  
Chairman

Enclosures.  
Factual and Legal Analysis

1 **FACTUAL AND LEGAL ANALYSIS**

2 **MUR 6889**

3  
4 **RESPONDENT:** Eric Byer

5  
6 **I. INTRODUCTION**

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8 This matter originated with the *sua sponte* submission made to the Federal Election  
9 Commission ("the Commission") by Eric Byer ("Byer") and information ascertained by the  
10 Federal Election Commission ("Commission") in the normal course of carrying out its  
11 supervisory responsibilities.

12 **II. FACTUAL SUMMARY**

13 **A. Background**

14 The National Air Transportation Association ("NATA") is a national incorporated  
15 membership organization (trade association) representing aviation business service providers.<sup>1</sup>  
16 The available information indicates that NATA is governed by a Board of Directors and its day-  
17 to-day operations are handled by its president, officers, and staff. Further, the available  
18 information indicates that 1) James Coyne was NATA's President/CEO from 1998 to 2012; and  
19 2) Alan Darrow was NATA's Director of Finance and Administration and later its Vice President  
20 of Administration beginning in 1995 until his retirement in 2009. Eric Byer served at NATA as  
21 its Government Affairs Specialist from 1999 to 2003, Director of Government and Industry  
22 Affairs from 2003 to 2004, and Vice-President of Government & Industry Affairs from 2004 to  
23 August 2012.<sup>2</sup>

<sup>1</sup> See generally <http://www.nata.aero/About-NATA.aspx> (last visited Apr. 21, 2014).

<sup>2</sup> Although in his interview with NATA, Byer indicated that he had been promoted to Chief Operating Officer, the available information indicates that NATA had no such position.

1 NATA established the National Air Transportation Association Political Action  
2 Committee ("NATA PAC") on September 28, 1998.<sup>3</sup> Michael Delk was the PAC treasurer from  
3 1998 until his resignation in July 2013.<sup>4</sup> The available information indicates that Delk resides in  
4 Salem, Oregon and all PAC disclosure reporting related matters were handled by an Assistant  
5 Treasurer, located at NATA headquarters. Darrow was designated as the PAC Assistant  
6 Treasurer from 2001 to 2002.<sup>5</sup> Burnside was PAC Assistant Treasurer from 2002 to 2003.<sup>6</sup> Byer  
7 was the PAC Assistant Treasurer from October 2003 to October 2012.<sup>7</sup> The available  
8 information further indicates that NATA PAC retained an outside consultant who worked with  
9 Byer to file NATA PAC disclosure reports with the Commission.

10 **B. The Contribution Reimbursement Plan**

11 **1. Inception and Operation**

12 The available information indicates that in 2001, as Congress began to consider a  
13 reauthorization bill for the Federal Aviation Administration, members of NATA expressed  
14 concern that NATA PAC was "non-existent" in the political process. As a result, Byer and  
15 Darrow met to discuss PAC participation. During the meeting, they considered whether to pay  
16 employees extra compensation that could be diverted through payroll deductions to the PAC. It  
17 appears that Byer suggested the idea after "picking it up" from colleagues at other trade  
18 associations, asserting that reimbursing contributions through compensation was "pretty

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<sup>3</sup> See NATA PAC, Statement of Organization (Sept. 28, 1998).

<sup>4</sup> See NATA PAC, Statement of Organization and Amended Statements of Organization (1998-2013).

<sup>5</sup> See NATA PAC, Amended Statement of Organization (May 22, 2001).

<sup>6</sup> See NATA PAC, Amended Statement of Organization (July 19, 2002).

<sup>7</sup> See NATA PAC, Amended Statement of Organization (Oct. 16, 2003).

1 predominant in other groups.”<sup>8</sup> While Byer could not initially recall Darrow’s reaction to the  
2 idea, he later recalled that Darrow spoke in favor of the plan.

3 The Commission is in possession of information that in July 2001, Linda Barker, Chair of  
4 NATA and NATA PAC, presented the NATA Board of Directors with a recommendation to  
5 reimburse NATA employees for their contributions to NATA PAC. The Board approved that  
6 recommendation and recorded it in the meeting minutes as follows: “The Board agreed with a  
7 recommendation by Mrs. Barker that interested staff members may make contributions to the  
8 PAC and that, if legal, the association can ‘gross up’ their salaries to offset the contribution.”  
9 Further, the available information indicates that Coyne was present at this meeting as a member  
10 of the Board, Darrow attended as “Staff,” Delk attended as a “Guest,” but Byer is not listed as an  
11 attendee. Barker did not recall any details beyond what was recorded in the Minutes, but noted  
12 that “it was pretty much staff driven if I remember correctly. I don’t think I came up with that  
13 idea.” Barker thought that she worked with Coyne on the PAC but did not recall having any  
14 discussions with Darrow or Byer.

15 After the NATA Board meeting, the available information indicates that either Byer or  
16 Darrow then explained how to make the reimbursements to the payroll manager, Johanna  
17 O’Toole, and Byer told her to enroll the employees. The first salary increases and corresponding  
18 payroll deductions began in December 2001. Initially, each participating employee’s pay was  
19 increased \$3,900 per year, \$3,000 of which was deducted as a contribution to NATA PAC and  
20 the additional \$900 intended to cover any tax liability resulting from the increased pay. The

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<sup>8</sup> Further, the available information indicates that Byer initially suggested to Darrow that NATA employees contribute to the PAC from their own personal funds and claimed that he wanted the employee contributions to be “above-board.”

1 available information indicates that in 2009, PAC contributor's salaries were increased at Byer's  
2 request to \$6,500 per year, with up to \$5,000 deducted as a PAC contribution and \$1,500  
3 intended to offset tax liability. As a result of this arrangement, between December 2001 and  
4 August 15, 2012, 20 NATA employees, including Byer and Darrow, made \$214,353 in  
5 contributions to NATA PAC in their names using NATA funds.

6 Further, information in possession of the Commission shows that Byer initially denied  
7 that he knew that any NATA employees' compensation had been increased to reimburse  
8 contributions until he was presented with that showed Byer solicited employees to participate in  
9 the contribution reimbursement plan, at which point Byer acknowledged his involvement. In  
10 addition, the NATA payroll manager, O'Toole, was present for a discussion between Byer and  
11 Darrow after the program began during which they discussed how the program would operate.  
12 The information also reveals that Byer discussed the amount the employees would receive and  
13 described how that amount would then be deducted and contributed to NATA PAC. Further,  
14 Darrow purportedly responded that this could not be done unless there was also an amount  
15 provided to each employee to account for the increased taxes the employee would incur. While  
16 Darrow does not recall the meeting, he acknowledged that it would not have been unreasonable  
17 for me to attend such a meeting or express concern about employees being personally  
18 responsible for any tax liability resulting from their increased compensation and that he was of  
19 the opinion that it is not uncommon to increase compensation to offset certain benefits that  
20 employees must pay directly.

21 Notwithstanding the minutes of the July 2001 Board meeting stating that the Board's  
22 approval was contingent on the legality of the program, Byer does not recall anyone at NATA  
23 seeking legal advice concerning the lawfulness of the proposed contribution reimbursement plan

1 before it was implemented. However, the available information indicates that Whitney Burns,  
2 NATA's outside PAC consultant, told Byer in approximately 2001 that contributions must be  
3 voluntary and could not be compensated, and further asserts that she provided Byer with  
4 materials regarding the prohibition against reimbursed contributions. In addition, Byer did not  
5 recall any conversation with Burns regarding the legality or propriety of the contribution  
6 reimbursement plan. Byer subsequently recalled that Burns told him that employees could  
7 contribute to the PAC and that employees could make their contributions via payroll deduction,  
8 but he continued to assert that he could not recall any discussion about increased employee  
9 compensation related to PAC contributions.

10 The available information suggests that most of the employees whose contributions to the  
11 PAC were reimbursed lacked sufficient experience or knowledge of the program to suspect that  
12 the arrangement might be prohibited. Others did not question the arrangement because Byer  
13 assured them that it was common practice. Further, the available information indicates that some  
14 employees raised concerns with Byer about the arrangement. For instance, Timothy Heck had a  
15 conversation with Byer about the PAC contribution program shortly after he was hired as  
16 NATA's Vice-President of Financial Operations in October 2009. During this conversation,  
17 Heck raised concerns about the propriety and legality of the PAC contribution program, and  
18 Byer assured him that everything was "above the table." The available information indicates that  
19 Byer further responded to Heck that he had "checked it out" with NATA's PAC consultant.  
20 Despite Byer's assurance, Heck felt that the PAC contribution program did not "look kosher"  
21 and he was not comfortable with participating, so he did not.

22 According to the available information, O'Toole overheard a "heated" conversation  
23 between Heck and Byer after Heck asked her to explain the way the reimbursement program

1 worked. O'Toole did not hear the entire conversation but heard Heck say something to the effect  
2 of "You can't do it. It's not legal," to which Byer responded, "Everybody does it. The program  
3 will continue." O'Toole did not recall hearing any description of why Heck believed the  
4 program was illegal or improper. The information further indicates that this was the first time  
5 that O'Toole heard anything about the program that made her question whether it was "right."  
6 After several casual conversations with Heck in which he told her that he would not be involved  
7 with the program and suggested that she terminate her participation, she withdrew as well.  
8 Moreover, the information shows that Byer recalled that Heck may have raised an issue about it  
9 because he would have been making sure that it was "above board because Tim is an above-  
10 board guy." In addition, Byer or Kristen Moore told Mike France, another NATA employee,  
11 that while NATA could not contribute money to the PAC directly, "it was okay" and "totally  
12 legal" for NATA to "give the money to employees for the contribution."

13                   2.     The Role of Byer

14             Byer claims that he was a lower-level employee when the contribution reimbursement  
15 plan was first proposed and approved by the Board and then implemented, and that Darrow was  
16 the NATA official who would have been responsible for obtaining legal advice concerning the  
17 legality of the plan.<sup>9</sup> The available information indicates that Darrow was assisted in  
18 administering the PAC by Byer, who was a "specialist" in the government affairs department at  
19 that time who "undertook a substantial ongoing role in maintaining the compensation  
20 arrangement." While Byer may not have been a manager or an officer in the early years of the  
21 plan, he was primarily responsible for soliciting NATA employees' participation in the PAC

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<sup>9</sup> Byer Submission, Byer Decl. ¶ 7.

1 contribution program and coordinating with NATA's payroll coordinator to handle the  
2 appropriate salary increases and payroll deductions for NATA PAC contributions even after he  
3 was promoted to officer status in 2004. The information also shows that Byer supervised Kristen  
4 Moore, the NATA employee who assumed these PAC-related responsibilities upon Byer's  
5 promotion in 2004 to Vice-President of Government and Industry Affairs, as well as other  
6 employees until his termination in 2012.

### 7 III. LEGAL ANALYSIS

#### 8 A. Reimbursed Contributions

9 The Act prohibits corporations from making contributions to a federal political  
10 committee (other than independent expenditure-only political committees)<sup>10</sup> and further prohibits  
11 any officer of a corporation from consenting to any such contribution by the corporation.<sup>11</sup> The  
12 Act also provides that "no person shall make a contribution in the name of another person."<sup>12</sup>  
13 That prohibition extends to knowingly permitting one's name to be used to effect the making of a  
14 contribution in the name of another or, under the Commission's implementing regulation, to  
15 knowingly helping or assisting "any person in making a contribution in the name of another."<sup>13</sup>  
16 The Commission has explained that the provisions addressing those who knowingly assist a

<sup>10</sup> See, e.g., Advisory Op. 2010-11 (Commonsense Ten) (concluding that corporations and unions may make unlimited contributions to independent-only political action committees because "independent expenditures do not lead to, or create the appearance of *quid quo pro* corruption") (citing *Citizens United v. FEC*, 558 U.S. 310, 359 (2010)) (emphasis in original).

<sup>11</sup> 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)); 11 C.F.R. § 114.2(b), (e). A corporation's solicitation of its executive and administrative personnel for contributions to its separate segregated fund is not considered a contribution or expenditure. See *id.* § 30118(b)(2)(C) (formerly § 441b(b)(2)(C)); 11 C.F.R. §§ 114.1(a)(2)(iii), 114.7(a). On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

<sup>12</sup> 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f); 11 C.F.R. § 110.4(b)(1)(i).

<sup>13</sup> 11 C.F.R. § 110.4(b)(1)(ii), (iii).

1 conduit-contribution scheme apply to "those who initiate or instigate or have some significant  
2 participation in a plan or scheme to make a contribution in the name of another."<sup>14</sup>

3           **B.     Eric Byer Consented to the Making of Prohibited Contributions in the**  
4           **Names of Others and Permitted His Name to be Used to Make Prohibited**  
5           **Contributions in the Name of Another**  
6

7           The available information supports the conclusion that Byer played an integral role in the  
8 contribution reimbursement scheme — first as a NATA employee and then as a NATA officer  
9 — during its entire eleven-year existence. Byer originated the idea for the contribution  
10 reimbursement plan, presented the proposal to NATA officer Darrow, solicited employee  
11 participation in the contribution reimbursement program, worked with staff to enroll employees  
12 in the program, and oversaw the day-to-day management of the PAC operations. And although  
13 Byer claims that he believed the compensation program was lawful, the substantial weight of the  
14 available information belies that assertion.

15           There may also be a fair basis to support a finding that Byer acted knowingly and  
16 willfully. Burns — a consultant NATA PAC hired to assist in filing Commission disclosure  
17 reports — specifically recalled discussing the proposed compensation-reimbursement scheme  
18 with Byer. She represented that she told Byer that NATA employees could not be given a raise  
19 or bonus to cover the costs of their contributions to NATA PAC and that she provided Byer with  
20 materials that explained the requirements for the soliciting of restricted class employees for PAC  
21 contributions. In addition, in his government affairs role, Byer authored numerous NATA  
22 documents concerning campaign finance laws, including correspondence informing NATA  
23 members and employees about the restrictions and prohibitions on corporate contributions under

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<sup>14</sup> Explanation & Justification for 11 C.F.R. § 110.4, 54 Fed. Reg. 34,105 (Aug. 17, 1989) ("E&J").

1 the Act and Commission regulations, further evidencing his sophistication and awareness of the  
2 applicable legal requirements governing contributions to NATA PAC.

3 Further, several other employees claimed that they raised concerns directly with Byer  
4 about the legality of the program. In particular, Heck claimed that he refused to participate in the  
5 PAC contribution program and directly challenged Byer concerning its legality. Byer  
6 nonetheless informed Heck that the arrangement was "above the table" and "kosher." O'Toole  
7 stated that she overheard portions of that conversation and confirms that she specifically heard  
8 Byer tell Heck that "Everybody does it. The program will continue." Byer also assured Heck  
9 that the program had been vetted and was lawful when, in fact, it appears that Byer had no  
10 personal knowledge or reason to believe that any such legal consultation had occurred.  
11 Similarly, when NATA employee France asked questions about the arrangement, Byer  
12 responded that while NATA could not contribute money to the PAC directly, "it was okay" and  
13 "total legal" for NATA to "give money to employees for the contribution."

14 Nonetheless, as a matter of policy the Commission has concluded that it may in  
15 appropriate circumstances "[r]efrain from making a formal finding that a violation was knowing  
16 and willful, even where the available information would otherwise support such a finding."<sup>15</sup> In  
17 this matter, Byer has cooperated with NATA PAC's internal review, as well as filing his own  
18 separate *sua sponte* submission, which brought substantial information to the attention of the  
19 Commission in connection with the matter. For this reason, the Commission did not conclude  
20 that that Byer knowingly and willfully violated the Act and Commission regulations.

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<sup>15</sup> Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions). 72 Fed. Reg. 16,695, 16,696 (Apr. 5, 2007).

1           Accordingly, the Commission found reason to believe that Eric Byer consented to NATA  
2   making prohibited contributions in violation of 52 U.S.C. § 30118(a) (formerly 2 U.S.C.  
3   § 441b(a)) and 11 C.F.R. § 114.2(e). In addition, the Commission found reason to believe that  
4   Eric Byer permitted his name to be used to make prohibited contributions, totaling \$39,229  
5   between 2001 and 2012, in violation of 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f) and  
6   11 C.F.R. § 110.4(b)(1)(ii).<sup>16</sup>

<sup>16</sup> Byer was Government Affairs Specialist, a staff position, when the program was implemented and became Vice-President of Government and Industry Affairs on August 15, 2004. Therefore, our finding concerning his consenting to making and accepting prohibited contributions in the names of others addresses only his activities as a NATA officer and PAC Assistant Treasurer that remain within the limitations period, that is, from December 2008 to August 2012.

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